

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

EUGENE I. KELLY,	:	
	:	Civil Action No. 08-3795 (JBS)
Plaintiff,	:	
	:	
v.	:	<b>ORDER</b>
	:	(CLOSED)
JOSEPH D. SWIFT,	:	
	:	
Defendant.	:	

For the reasons expressed in the Court's Opinion filed herewith,

It is on this 4<sup>th</sup> day of **August**, 2008,

ORDERED that, pursuant to 28 U.S.C. § 1915(a) and (b), the application by plaintiff to proceed in forma pauperis is hereby granted; and it is further

ORDERED that the Clerk of the Court is directed to file the Complaint without prepayment of the filing fee; and it is further

ORDERED that, pursuant to 28 U.S.C. § 1915(b), the Clerk shall serve a copy of this Order by regular mail on the Attorney General of the State of New Jersey and on the Warden of the Atlantic County Justice Facility, where plaintiff presently is confined; and it is further

ORDERED that plaintiff is assessed a filing fee of \$350.00 which shall be deducted from plaintiff's prison account pursuant to 28 U.S.C. § 1915(b)(2) in the manner set forth below, regardless of the outcome of the litigation; and it is further

ORDERED that, pursuant to 28 U.S.C. § 1915(b)(2), until the \$350.00 fee is paid, each month that the amount in plaintiff's prison account exceeds \$10.00, the agency having custody of plaintiff shall assess, deduct from his account, and forward to the Clerk payments equal to 20% of the preceding month's income credited to plaintiff's prison account, with each payment referencing the civil docket number of this action; and it is further

ORDERED that the Complaint is DISMISSED WITHOUT PREJUDICE, in its entirety, as against the defendant, pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1), for failure to state a claim upon which relief may be granted at this time.

**s/ Jerome B. Simandle**  
JEROME B. SIMANDLE  
United States District Judge